

U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WV
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NORTHERN DISTRICT OF WEST VIRGINIA

LAKE CITY ENTERPRISES, INC.,
and THOMAS L. REESE,

Plaintiffs,

Vs.

CIVIL ACTION NO. 83-0341-E(K)

FEDERAL DEPOSIT INSURANCE
CORPORATION, Receiver for the
Tucker County Bank; J & W, INC.,
a West Virginia corporation,
a/k/a Triple S, Inc., a
West Virginia corporation,

Defendants.

and

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its
corporate capacity,

Plaintiff,

CIVIL ACTION NO. 84-0074-E(K)
Which Has Been Consolidated With
CIVIL ACTION NO. 83-0341-E(K)

THOMAS L. REESE and
LAKE CITY ENTERPRISES,
INC., a corporation,

Defendants.

MEMORANDUM OPINION

On November 14, 1988, plaintiff, The Cadle Company, filed its motion for summary judgment. By Order of November 18, 1988, the Court informed defendant Thomas L. Reese, who is proceeding

pro se, of his right to file counter-affidavits and the consequences thereof. Mr. Reese has filed no counter-affidavits, nor has he opposed plaintiff's motion.

Upon consideration of plaintiff's motion, the Court finds that there is no genuine issue as to the following material facts:

1. On November 29, 1982, defendant, Thomas L. Reese ("Reese"), executed a promissory note payable to The Tucker County Bank in the principal amount of \$315,000.00, with interest at the rate of 15% per annum.

2. On November 29, 1982, defendant, Lake City Enterprises, Inc. ("Lake City"), executed a promissory note payable to The Tucker County Bank in the principal amount of \$110,000.00, with interest at the rate of 15% per annum.

3. Such notes were executed to evidence loans made by The Tucker County Bank to Reese and Lake City to finance the purchase by them of certain equipment from The Tucker County Bank. Such equipment was sold "as is" with no warranty.

4. Each of said defendants has defaulted on the payment of the respective notes and the payment of the indebtedness of each note has been accelerated as provided therein.

5. There is due and owing the unpaid principal sum of \$302,541.68 under the Reese note, together with accrued interest thereon at the contract rate.

6. There is due and owing the unpaid principal sum of \$110,000.00 under the Lake City note, together with accrued interest thereon at the contract rate.

7. On February 3, 1984, the Commissioner of Banking of West Virginia declared The Tucker County Bank to be insolvent and appointed Federal Deposit Insurance Corporation ("FDIC") as Receiver for the Bank. Thereafter, FDIC, in its corporate capacity as authorized by 12 U.S.C. § 1823(c)(A), purchased from Receiver certain assets of said Bank, including the two promissory notes above described.

8. FDIC, in its corporate capacity, sold and assigned all of its right, title and interest in said promissory notes to The Cadle Company by Asset Sale Agreement dated September 15, 1987. As assignee of the promissory notes, The Cadle Company has succeeded to the rights, remedies, and obligations of the original payee, The Tucker County Bank, arising thereunder, and is entitled to collection of the indebtedness evidenced by the promissory notes.

Based upon these facts, the Court is of the opinion that The Cadle Company, as assignee, has the right to enforce the terms of the notes and to collect from Reese and Lake City the indebtedness evidenced by the same.

Therefore, it is hereby ORDERED that The Cadle Company's motion for summary judgment be GRANTED and The Cadle Company is entitled to judgment on the complaint in Civil Action No. 84-0074-E(K) and the counterclaim in Civil Action No. 83-0341-E(K); and that the complaint in Civil Action No. 83-0341-E(K) should be, and hereby is, DISMISSED.

Accordingly, judgement shall be entered in the amount of \$302,541.68 against defendant Thomas L. Reese, together with

accrued interest thereon at 15% per annum; judgment in the amount of \$105,734.97 shall be entered against the defendant Lake City Enterprises, Inc., together with accrued interest thereon at 15% per annum; and these cases shall be stricken from the Court's docket.

The Clerk is directed to transmit certified copies of this Order to counsel of record herein.

ENTER:


WILLIAM M. KIDD
UNITED STATES DISTRICT JUDGE

I hereby certify that the annexed instrument is a true and correct copy of the original filed in my office.

ATTEST: Dr. Wally Edgett
Clerk, U. S. District Court
Northern District of West Virginia

By: 
Deputy Clerk